

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON, D.C. 20554

News Media Information: (202) 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 12-2073
December 21, 2012

MEDIA BUREAU ANNOUNCES JANUARY 10 – JANUARY 25, 2013 FILING WINDOW FOR AUCTION 83 FM TRANSLATOR APPLICATION SELECTIONS AND CAPS SHOWINGS

On December 4, 2012, the Federal Communications Commission released *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order.¹ The *Fifth Order* modified the national cap and the per-market caps adopted earlier this year² for FM translator applications pending from the 2003 Auction 83 application window (the “Applications”).³ The *Fifth Order* directed the Media Bureau to resume processing the Applications, beginning with implementation of the modified cap restrictions. By this Public Notice, the Media Bureau (“Bureau”) announces that any applicant that is subject to either the national cap described below (the “National Cap”) or the per-market cap described below (the “Appendix A Market Caps”) must submit a. a list of Applications selected for further processing and/or a list of Applications selected for dismissal (“Selection List”); and b. cap compliance showings (“Caps Showings”) for the Applications which the applicant has identified for further processing. Selection Lists and Caps Showings must be submitted during a filing window that begins on January 10, 2013 and ends on January 25, 2013 (the “Caps Deadline”). All Caps Showings must be based on facilities specified in the pending Applications. No amendments to Applications will be permitted in connection with these Caps Showings nor may any Caps Showing assume a future amendment to the Application. No submission is required for this filing window by any Auction 83 applicant that has fewer than 51 pending Applications nationally and no more than one pending Application in any of the Appendix A Markets, as defined below.

1. The National Cap

The National Cap allows each applicant to prosecute up to 70 Applications nationally, provided that no more than 50 of those Applications are in the markets identified in Appendix A to the *Fourth Report and Order* (the “Appendix A Markets”).⁴ (As indicated in the *Fifth Order*, an Application is

¹ See *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, FCC 12-144 (rel. Dec. 4, 2012) (“*Fifth Order*”).

² See *Creation of a Low Power Radio Service*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364 (2012) (“*Fourth Report and Order*”).

³ This includes short-form and long-form Applications. For purposes of this Public Notice, “short-form” refers to any pending Application submitted as an engineering proposal filed in the March 2003 FM translator Auction 83 filing window. “Long-form” refers to any pending Application for a new translator station or a major modification filed on FCC Form 349, during July or August of 2003, or May, June, or July of 2008. Each long-form has a previously filed short-form associated with it.

⁴ *Id.*, 27 FCC Rcd at 3398-3402. Any applicant that cannot or elects not to comply with the National Cap Conditions may prosecute up to 50 Applications without complying with those conditions. See *Fifth Order* at p. 14 n. 83.

considered to be in an Appendix A Market if it specifies a proposed transmitter site within the boundaries of the Arbitron Metro market.⁵) For any applicant proposing to prosecute 51-70 Applications nationally, those Applications that are outside the Appendix A Markets⁶ will be subject to the following conditions (collectively, the “National Cap Conditions”):

- The applicant must show that the protected (60 dBu) contour (calculated in accordance with 47 C.F.R. § 74.1204(b) (the “Standard Prediction Method”)) proposed in the Application does not overlap with the protected (60 dBu) contour (also calculated in accordance with the Standard Prediction Method) of any other pending FM translator application by that applicant or FM translator authorization held by that applicant as of December 4, 2012 (a “No Overlap Showing”).⁷
- The applicant must show that at least one low power FM (“LPFM”) licensing opportunity will remain at the proposed site if the Application is granted.⁸

Note: If granted, each Application that specifies a transmitter site that is outside the Appendix A Markets will have a condition stating that for the first four years of operation, the station cannot be moved to a site from which (calculated in accordance with the Standard Prediction Method) there is no 60 dBu contour overlap with the 60 dBu contour proposed in the Application as of December 4, 2012. That is, any modification during the first four years of operation must maintain 60 dBu contour overlap with the proposed 60 dBu contour in the Application as of December 4, 2012. Periods of silence will not count for purposes of this condition. No showing is required for this condition at this time.

2. The Appendix A Market Caps

The Appendix A Market Caps allow each applicant to prosecute up to three Applications in each Appendix A market, provided that each Application in an Appendix A Market where the applicant is prosecuting two or three Applications will be subject to the following conditions (collectively, the “Local Cap Conditions”):⁹

- The applicant must submit a No Overlap Showing for each Application.¹⁰

⁵ *Fifth Order*, p. 10 ¶ 28. For “embedded” Arbitron Metro markets, the *Fifth Report* clarifies how the Appendix A Market Caps apply to those markets. *Id.* at pp. 10-11, ¶¶ 29-30.

⁶ Those applicants with long-form Applications pending may use either the short-form or long-form facilities to demonstrate compliance with these conditions.

⁷ *See also* n. 10 below (contour overlap analysis does not apply across radio markets). When there is a minor variation in an applicant name but it is clear that the applicant is the same person or entity, this condition applies to all the Applications and FM translator authorizations of that person or entity, regardless of the name variation. *See Fifth Order* at p. 20 n. 113. However, this condition otherwise does not apply to applicant entities under common control or connected by attributable interests. *Id.* at p. 20 ¶ 58. This practice will also be applied to the Appendix A Market Caps.

⁸ *See* the attached Appendix explaining preclusion studies.

⁹ *See Fifth Order* at p. 18 ¶ 54. Any applicant that cannot or elects not to comply with the Local Cap Conditions for any Appendix A Market may prosecute a single Application in such a market without complying with those conditions. *Id.* at p. 21 ¶ 61.

¹⁰ This contour overlap analysis does not apply from one market to another. Therefore, applicants are free to pursue two or more Applications with contour overlap, provided that their transmitter sites are in different Appendix A Markets, or one is in an Appendix A Market and one is not. *See Fifth Order* at p. 20 n. 112.

- The applicant must show that grant of the Application would not preclude any future LPFM licensing opportunities within the grid for that market, under the processing policy delineated in Section II.B of the *Fourth Report and Order*,¹¹ or the sole available LPFM channel at the proposed out of grid transmitter site.¹²

3. Showings Required For Applicants Electing to Process More Than 50 Applications and/or More Than One Application in Any Appendix A Market

Each applicant that wishes to prosecute 51-70 Applications nationally and/or two or three Applications in any Appendix A Market must provide the Commission with the following information on or after January 10, 2013, but by the Caps Deadline:

- A Selection List identifying Applications for further processing and/or dismissal;¹³
- For any applicant that wishes to prosecute 51-70 Applications nationally, a Caps Showing that each of the Applications selected that are outside the Appendix A Markets complies with the National Cap Conditions; and
- For any applicant that wishes to prosecute two or three Applications in any Appendix A Market, a Caps Showing that, in each Appendix A Market, each Application selected complies with the Local Cap Conditions.

If an applicant does not comply with these requirements by the Caps Deadline or submits a deficient showing,¹⁴ the Bureau will:

- First apply the National Cap, retaining on file the first 70 filed Applications (by file number) and then dismissing (1) any Applications beyond the first 70 filed, (2) those Applications in Appendix A Markets within those 70 Applications that were filed after the first 50 Applications in Appendix A Markets, and (3) those Applications outside the Appendix A Markets for which an adequate showing of compliance with the National Cap Conditions has not been submitted; and
- Then apply the Appendix A Market Caps, dismissing all but the first filed Application by that applicant in each Appendix A Market.

¹¹ *Fourth Report and Order*, 27 FCC Rcd at 3376-88 ¶¶ 28-49.

¹² See the attached Appendix explaining preclusion studies.

¹³ In the event an applicant includes both “prosecute” and “dismiss” Applications in its Selection List, and there is a conflict between an applicant’s two lists, the Bureau will (1) act first on the “dismissal” list, and (2) retain those Applications identified on the “prosecute” list. If doing so results in an applicant’s noncompliance with the National Cap and/or Appendix A Market Cap(s), we will dismiss Applications in accordance with the procedures set forth in this Public Notice.

¹⁴ Examples of deficient showings by applicants subject to the National Cap and/or the Appendix A Market Caps appear in the *Fifth Order* at p. 18 n. 106. We strongly recommend that applicants that need any guidance about these showings seek it, well before the Caps Deadline, from one of the Media Bureau representatives listed below.

4. The Anti-Collusion Rule Remains In Effect For Auction 83 Applicants

As stated in the *Fourth Report and Order*, the auctions anti-collusion rule will remain in effect during the caps selection process.¹⁵ We caution Auction 83 applicants against engaging in communications prohibited by 47 C.F.R. § 1.2105(c) at any point in the caps selection process.

5. How To Submit Selection Lists and Caps Showings

Applicants are cautioned to review their Selection Lists and Caps Showings thoroughly before submission.¹⁶ Amendments to Selection Lists and/or Caps Showings will be permitted during the window. However, any amendment must be a complete substitute for the prior-filed Selection List and/or Caps Showings. That is, if a Selection List and/or a Caps Showings is amended, staff will consider ONLY the last-filed amendment to assess compliance with the National Cap and the Appendix A Market Cap. **Selection Lists and Caps Showings may not be submitted, amended, corrected or resubmitted for further consideration after the Caps Deadline. Neither a Selection List nor a Caps Showing will be treated as a matter subject to amendment, correction or completion pursuant to 47 C.F.R. § 73.3522(a).**

Applicants may submit their showings by email to the following address: FXshowings@fcc.gov. Please note that the Commission's e-mail system will not accept attachments larger than 10 MB, so files beyond that size should be divided into multiple sub-10 MB documents and sent via separate e-mails.

Alternatively, applicants may submit hard copies (original plus one copy, signed by a person authorized to act for the applicant pursuant to 47 C.F.R. § 73.3513) as follows:¹⁷

- **By Hand (8:00 a.m. – 7:00 p.m. only)**

Audio Division (James Bradshaw, 2-A267)
c/o Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

- **Commercial Overnight Mail (Except USPS)**

Audio Division (James Bradshaw, 2-A267)
c/o Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

¹⁵ See *Fourth Report and Order*, 27 FCC Rcd at 3386 ¶ 47 (citing 47 C.F.R. § 1.2105(c)).

¹⁶ We also note that parties with Applications within 39 kilometers of a grid centered in a market listed in Appendix A or B to the *Fourth Report and Order* as a Spectrum Limited market and parties proposing technical amendments to certain Applications in Spectrum Available markets will also be required to submit a non-preclusion showing at a future date, as described in the *Fourth Report and Order*, 27 FCC Rcd at 3385-88 ¶¶ 45-49. Applicants are cautioned to consider this future filing requirement before submitting their Selection List.

¹⁷ Compliance with the Caps Deadline will be assessed based on when a filing is received by the Commission, not by when it is sent. See 47 C.F.R. § 1.7.

All Other Mail (Including USPS Express Mail, Priority Mail, and First Class Mail)

Audio Division (James Bradshaw, 2-A267)
c/o Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

For additional information, contact James Bradshaw (James.Bradshaw@fcc.gov), Robert Gates (Robert.Gates@fcc.gov), or Larry Hannif-Ali (Larry.Hannif-Ali@fcc.gov), Audio Division, Media Bureau at (202) 418-2700. For press inquiries, contact Janice Wise at (202) 418-8165 or janice.wise@fcc.gov.

By: Chief, Media Bureau

-FCC-

Appendix

Preclusion Studies for Translator Caps

A preclusion study that addresses compliance with the National Cap by a party prosecuting 51-70 Applications involves a study at the proposed transmitter site for each Application outside the Appendix A Markets. A preclusion study that addresses compliance with the Appendix A Market Caps by a party prosecuting two or three Applications in an Appendix A Market may involve a “grid” test and a transmitter site test. These tests are described below.

The Bureau recently released an updated version of the LPFM grid tool.¹⁸ The files provided in that release can be used in conjunction with the “grid test” to identify the appropriate coordinates to use for the center of the grid for each Appendix A Market. The LPFM grid tool can be used to identify the LPFM channel/point combinations that are available within the relevant grid for each market for future LPFM licensing. Appendix A and Appendix B to the *Fourth Report and Order* collectively identify each Appendix A Market as either “Spectrum Available” or “Spectrum Limited.”¹⁹ All markets identified on Appendix A as “Spectrum Limited” used a 30x30 minute grid. All other Appendix A Markets used a grid size of either 30x30 minutes or 20x20 minutes, as shown in the far right column of Appendix B.

For purposes of preclusion studies required to be submitted by the Caps Deadline, applicants submitting required showings for either the National Cap or the Appendix A Market Caps will be protected from showings filed on subsequent business days.

This Appendix only addresses preclusion studies. The No Overlap Showings described in the Public Notice also must be submitted by the Caps Deadline.

A. National Cap: Transmitter Site Test

This applies to all Applications proposing transmitter sites outside Appendix A Market boundaries by parties proposing to prosecute 51-70 Applications nationally.

The applicant must show – ignoring the subject Application -- that no LPFM channels are available or – assuming grant of the subject Application – that at least one LPFM channel remains available at the transmitter site proposed in the subject Application. When determining available LPFM channels, studies must protect all authorizations and applications on co- and first-adjacent channels, including all pending Auction 83 Applications other than the subject Application.²⁰ The study should ignore second-adjacent and intermediate-frequency station protection requirements but otherwise should apply all other LPFM spacing requirements.

An Application fails this test if there is only one LPFM channel available at the proposed transmitter site and it would be precluded by the subject Application.

¹⁸ Public Notice, “Media Bureau Releases Updated Low Power FM Spectrum Availability Data Files,” DA 12-1987 (rel. Dec. 10, 2012) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1987A1.docx).

¹⁹ *Fourth Report and Order*, 27 FCC Rcd at 3398-3406. No “grid” test is required in Spectrum Available markets at this time because Spectrum Available market floors assume the pendency of all Applications.

²⁰ See *Fifth Order* at p. 15 n. 84.

B. Appendix A Market Caps

1. Transmitter Site Test

This applies to all groups of two-three Applications by the same applicant that specify transmitter sites in the same Appendix A Market, one or more of which are located outside the relevant grid for that market.

In order to submit a successful test, the applicant must show –ignoring the subject Application -- that no LPFM channels are available or – assuming the grant of the subject Application – that at least one LPFM channel remains available at the out of grid transmitter site proposed in each Application. Studies must protect all authorizations and applications on co- and first-adjacent channels, including all pending Auction 83 Applications other than the subject Application. The study should ignore second-adjacent and intermediate-frequency protection requirements but otherwise should apply all other LPFM spacing requirements.

An Application fails this test if there is only one LPFM channel available and it is precluded by the subject Application.

2. “Grid” Test for Spectrum Limited Appendix A Markets

This applies to all applicants that are proposing to prosecute two or three Applications in the same Appendix A Market, where (1) the market is Spectrum Limited, and (2) one or more Applications specify transmitter sites within 39 kilometers of the relevant grid for that market.²¹

When determining available LPFM channel/point combinations in Spectrum Limited markets, studies must protect all authorizations and applications on co- and first-adjacent channels, *excluding* all pending Auction 83 Applications.²² The study should ignore second-adjacent and intermediate-frequency protection requirements but otherwise should apply all other LPFM spacing requirements.

An Application fails this test if it precludes any identified channel/point licensing opportunity within the grid for a future LPFM station.

²¹ Thirty-nine kilometers is the largest LPFM to FM translator required spacing specified in 47 C.F.R. § 73.807(d)(1). Thus, in a Spectrum Limited market, an Application that is outside the grid by 39 kilometers or less is subject to both the “grid” test and the transmitter site test.

²² *Fourth Report and Order*, 27 FCC Rcd at 3387-88 (explaining the exclusion of pending Auction 83 Applications from this type of preclusion study).